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Senate

Statement of Senator Dianne Feinstein

“On the House of Representatives Vote to Split the Ninth Circuit Court”

Mrs. FEINSTEIN. Mr. President, I rise to oppose S. 878, or at least the version the House of Representatives just passed today. Essentially, what the House did was to poison a worthy bill, a bill that was meant to alleviate the crisis of an overwhelming workload under which the Federal judiciary is struggling. The House did so by adding language to split the Ninth Circuit into three circuits. In doing so, the House has essentially taken the new judges as hostages to a starkly partisan and controversial ploy.

I will not go along with such bullying tactics, and I am placing a hold on that bill today. It is with great regret, and with greater frustration, that I place this hold.

I will take a few minutes to explain why we so desperately need the new Federal judges S. 878 would provide, and then I want to make clear why I am so opposed to the language the House of Representatives has added to split the Ninth Circuit.

According to the Administrative Office of the Courts, the average caseload for every Federal district judge in the country is now 523 cases per judge. In 1999, the average was 480 cases. So it has increased 9 percent in 4 years. But that only tells part of the story. Of the four Federal district courts in California, my home State, three of them handled more cases per judge than the national average: the U.S. District Court for the Northern District of California, 544

cases; Southern District of California, 611 cases; the U.S. District Court for the Eastern District, 734 cases per judge, 40 percent more than the national average.

So it is this burden that needed to be remedied, and in this bill there were 51 district court judges. It was an important bill.

This situation extends far beyond California. For example, the district court for Nebraska, represented by my colleague Chuck Hagel, who has been working on this issue with me, has 627 cases per judge, almost 20 percent more than the average. Other courts with exceedingly high caseloads are in Iowa and Arizona.

The version of the Senate bill that the House Judiciary Committee

amended would have added 51 new Federal district court judges, 32 of them permanent, 15 temporary judges whose seats would expire when they retire, and 4 seats that would be converted from temporary to permanent. That version of the bill would also have added 11 judges to the circuits of the Court of Appeals. All of these additions came at the recommendation of the nonpartisan Judicial Conference of the United States. According to their 2003 report, the need for new judges is real and growing.

They go on to state:

Since 1991, the number of criminal case filings has increased 45 percent and the number of criminal defendants is 35 percent higher.

Then it continued on with the statistics. When the judges tell us that they need more judges to supervise criminal trials, to secure our borders, and to crack down on deadly firearms, it is our obligation to listen and to act, because these

judges are the linchpin of our justice system. Just as we need soldiers to help win the war on terror, we need enough judges to keep safe at home.

Instead of moving forward to simply add judges, which is what we need, the House essentially sabotaged the bill by adding an amendment to split the Ninth Circuit into these three new circuits.

This is not the time or the place for such an action. I am very much aware of arguments in favor of splitting the Ninth Circuit. In the Senate Judiciary Committee we have been debating this for years and, as I said at the Senate hearing on the issue earlier this year, I welcome the hearing and look at it with a much more open mind than I have in the past. I am sensitive to the fact that the Ninth Circuit had a 13-percent increase in caseload in a single year.

However, this is only one side of the argument. We have testimony from the chief judge of the Ninth Circuit, whom I respect greatly, who informs me

that the size is not an obstacle to efficiency. We have letters from the State Bar Associations of California, Arizona, and Hawaii opposing a circuit split. I have a letter from Governor Schwarzenegger of California opposing a split of the Ninth Circuit. I have letters from eight judges in the Ninth Circuit opposing a circuit split, and also a letter from Senator Sessions saying that he has received letters from 15 Ninth Circuit judges opposing a split.

Suffice it to say that reasonable minds can differ on whether the Ninth Circuit should be split. What reasonable minds, I think, have to agree on is this is no way to undertake such a momentous change in our Nation's history. I suspect what is happening is that opponents of the Ninth Circuit are trying to take a bill that we need, add new judges, and make the Congress accept the split to the Ninth Circuit as the price.

The fact of the matter is the split they propose will not equalize the caseload.

There will still be a disproportionate caseload with the methodology used in the split followed by the House decision voted on this morning. Under the House bill, the new Ninth Circuit, with California, Hawaii, Guam, and the Northern Mariana Islands, would have 407 cases per circuit judge. That is much more than the new Twelfth Circuit, of Nevada, Arizona, Idaho, and Montana, which would have 280 cases per circuit judge. It is also much more than the new Thirteenth Circuit, of Alaska, Oregon, and Washington, which would have 279 cases per judge. So the House bill does not solve the problem of an even split of cases between the circuits.

What we found as we looked at this over the years is that an even split cannot happen unless California is split in half, because the State, and ergo the number of cases, is simply too large. This has always been the dilemma.

Additionally, this legislation causes major new costs. The

Administrative Office of the Courts states that the startup costs for a three-way split that the House today demanded would ring up \$131.3 million to make that particular split.

Despite the need for new judges, I cannot accept this ploy. This is the time for new Federal judges. It is not the time to split the Ninth Circuit. I think the House of Representatives has harmfully cemented one weighty issue to the other and it is not going to work.

So, regretfully, I must place a hold on this bill. I hope Members who are concerned about this will listen, and I hope it is not too late to work out some solution.

I yield the floor.